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PATENT APPLICATION

FEB 22 2006 ATTORNEY DOCKET NO. 10008264-1

IN THE  
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Budrys et al.

Confirmation No.: 8789

Application No.: 09/916,939

Examiner: Hanne, Sara M.

Filing Date: 7/27/2001

Group Art Unit: 2179

Title: MULTI-COMPONENT ICONIC REPRESENTATION OF FILE CHARACTERISTICS

Mail Stop Appeal Brief-Patents  
Commissioner For Patents  
PO Box 1450  
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on 12/22/2005.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) \$500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

( ) (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

( ) one month	\$120.00
( ) two months	\$450.00
( ) three months	\$1020.00
( ) four months	\$1590.00

( ) The extension fee has already been filled in this application.

(X) (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account **08-2025** the sum of \$500.00. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

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Number of pages: 20

Typed Name: Thomas H. Ham

Signature: Thomas H. Ham

Respectfully submitted,

Budrys et al.

By Thomas H. Ham

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CHARACTERISTICSMail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450BRIEF ON APPEAL

Sir/Madam:

This brief is in furtherance of Applicants' Notice of Appeal filed on December 22, 2005, appealing the decision of the Examiner dated October 5, 2005 finally rejecting claims 1, 2 and 6-22.

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## CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. 1.8

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Number of Pages: 20 (including TRANSMITTAL LETTER)Signed: Thomas H. Ham

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I. Real Party in Interest

The real party in interest in this appeal is Hewlett-Packard Company, a Delaware Corporation, having a principal place or place of business in Palo Alto, California.

II. Related Appeals and Interferences

There are currently no related appeals or interference proceedings in progress that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the present Appeal.

III. Status of Claims

Claims 1-19 were originally filed with the application on July 27, 2001. In Response to Office Action filed on June 7, 2004, claims 1, 3-5, 9-11 and 14-16 were amended. In Response to Office Action filed on December 2, 2004, claims 1, 9 and 14 were further amended, claims 4 and 5 were canceled and claims 20-22 were added. In Response to Office Action filed on July 15, 2005, claims 1, 9 and 14 were further amended, and claim 3 was canceled. No claims have been amended, canceled, or added for purposes of this Appeal.

Claims 1, 2 and 6-8 stand rejected under 35 U.S.C. 102(c) as allegedly being anticipated by U.S. Patent No. 6,670,974 ("McKnight et al."). Claims 9-13 stand rejected under 35 U.S.C. 102(e) as allegedly being anticipated by U.S. Patent No. 6,570,597 ("Seki et al."). Claim 20 stands rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over McKnight et al. Claim 21 stands rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Seki et al. Claims 14-19 and 22 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Seki et al. and in further view of U.S. Patent No. 6,459,441 ("Perroux et al.").

This Appeal is made with regard to pending claims 1, 2 and 6-22.

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#### IV. Status of Amendments

No amendments were filed subsequent to final rejection.

#### V. Summary of Claimed Subject Matter

The claimed invention is a multi-component icon and a method of generating thereof (see Applicants' specification on page 4, paragraph [0011]). According to an embodiment of the invention, as recited in claim 1, a multi-component icon (20A of Fig. 2A; 20B of Fig. 2B; 20C of Fig. 2C; Figs. 3A-3G) generated from characteristics of a data object where the characteristics include data object content and data object metadata, the icon comprising a plurality of icon portions (21 and 22 of Fig. 2A; 23, 24A and 24B of Fig. 2B; 25 of Fig. 2C; Figs. 3A-3D; 30 and 31 of Fig. 3E; 32 and 33 of Fig. 3F; Fig. 3G), each having a plurality of visual variations, each icon portion being variably assignable to any one characteristic of the data object wherein each variation of the at least one characteristic is visually represented by the icon by a corresponding one visual variation of a variably assigned icon portion, the plurality of icon portions including a main body icon portion (e.g., 23 of Fig. 2B; see Figs. 3A-3D) and a pair of wing icon portions (e.g., 24A and 24B of Fig. 2B; see Figs. 3A-3D), each of the wing icon portions being directly attached to the main body icon portion and protruding from the main body icon portion. According to an embodiment of the invention, as recited in claim 9, a method of generating a multi-component icon from characteristics of a data object where the characteristics include data object content and data object metadata, the method comprising providing (40 of Fig. 4) an icon having a plurality of visual traits each having a plurality of visual variations, the plurality of visual traits including icon portions, the icon portions including a main body icon portion and a pair of wing icon portions, each of the wing icon portions being directly attached to the main body icon portion and protruding from the main body icon portion, variably assigning (41 of Fig. 4) any one of the visual traits to any one of the characteristics of the data object metadata such that each variation of a selected characteristic of the data object metadata is represented by a visual variation of a selected visual trait, and displaying (42 of

Fig. 4) the icon according to the assignment of the selected visual trait to the selected characteristic. According to an embodiment of the invention, as recited in claim 14, a method of creating a multi-component icon for each of a set of data objects from characteristics of the set of data objects, the characteristics including data object content and data object metadata, the method comprising determining (51 of Fig. 5) a common characteristic of the data object metadata common to the set of data objects, determining (52 of Fig. 5) the number of variations associated with the common characteristic, determining (53 of Fig. 5) a visual trait of the multi-component icon having a corresponding number of visual variations that are greater than or equal to the number of variations of the common characteristic and assigning it to the common characteristic, and displaying (54 of Fig. 5) the customized icons for the set of data objects according to the assignment of the visual trait to the common characteristic, each of the customized icons including icon portions, the icon portions for each of the customized icons including a main body icon portion and a pair of wing icon portions, each of the wing icon portions being directly attached to the main body icon portion and protruding from the main body icon portion.

VI. Grounds of Rejection to be Reviewed on Appeal

Whether claims 1, 2 and 6-8 are anticipated under 35 U.S.C. §102(e) by McKnight et al.

Whether claims 9-13 are anticipated under 35 U.S.C. §102(e) by Seki et al.

Whether claims 14-19 and 22 are unpatentable under 35 U.S.C. §103(a) over Seki et al. and in further view of Perroux et al.

Whether claim 20 is unpatentable under 35 U.S.C. §103(a) over McKnight et al.

Whether claim 21 is unpatentable under 35 U.S.C. §103(a) over Seki et al.

## VII. Argument

### A. Rejection of Independent Claim 1 Under 35 U.S.C. §102(e)

In the Final Office Action of October 5, 2005, the independent claim 1 was rejected under 35 U.S.C. §102(e) as allegedly being anticipated by McKnight et al. However, each element of claim 1 is not disclosed in McKnight et al., and thus, claim 1 is not anticipated by McKnight et al.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). In the case at hand, claim 1 recites "*a plurality of icon portions*" with the limitations of "*the plurality of icon portions including a main body icon portion and a pair of wing icon portions, each of the wing icon portions being directly attached to the main body icon portion and protruding from the main body icon portion.*" In section 3 on pages 2 and 3 of the Final Office Action of October 5, 2005, the Examiner asserts that McKnight et al. teaches "the icon portions including a main body icon portion (Figure 12, ref. 1240 part of the contiguous icon) and a pair of wing icon portions directly attached to the main body portion and protruding from the main body portion (Figure 12, ref. 1210, 1204, 1206, 1208)." However, the elements 1204, 1206, 1208 and 1210 in Fig. 12 of McKnight et al. are NOT "*directly attached to the main body icon portion and protruding from the main body icon portion,*" as recited in claim 1. The elements 1204, 1206 and 1208 are NOT directly attached to any other element. The element 1210 is attached to or part of the element 1202, but NOT attached to the element 1240, which was considered by the Examiner as the recited "*main body icon portion*". Furthermore, none of these elements 1204, 1206, 1208 and 1210 is "*protruding from the main body icon portion,*" as recited in claim 1. Thus, McKnight et al. does not disclose the recited limitations of "*the plurality of icon portions including a main body icon portion and a pair of wing icon portions, each of the wing icon portions being directly attached to the main body icon portion and protruding from the main body icon portion.*"

Since McKnight et al. does not disclose the recited limitations with respect to the “*main body icon portion*” and the “*pair of wing icon portions*,” claim 1 is not anticipated by McKnight et al.

**B. Rejection of Independent Claim 9 Under 35 U.S.C. §102(e)**

In the Final Office Action of October 5, 2005, the independent claim 9 was rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Seki et al. However, each element of claim 9 is not disclosed in Seki et al., and thus, claim 9 is not anticipated by Seki et al.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). In the case at hand, claim 9 recites in part “*providing an icon having a plurality of visual traits each having a plurality of visual variations*” with the limitations of “*each of the customized icons including icon portions, the icon portions for each of the customized icons including a main body icon portion and a pair of wing icon portions, each of the wing icon portions being directly attached to the main body icon portion and protruding from the main body icon portion.*” In section 4 on page 3 of the Final Office Action of October 5, 2005, the Examiner asserts that Seki et al. teaches “the visual traits including a main body icon portion (ref. 10) and a pair of wing icon portions directly attached to the main body portion and protruding from the main body portion (Figures 2 and 5, wing portion B touches main body A directly).” The referenced element B in Fig. 2 of Seki et al. does “touch” the element A, although the element B in Fig. 5 does not “touch” the element A. However, claim 10 recites “*a pair of wing icon portions*,” not just a single wing icon portion. The other element C in Figs. 2 and 5 of Seki et al. is NOT “*directly attached to the main body icon portion*” and is NOT “*protruding from the main body icon portion*,” as recited in claim 9. Thus, Seki et al. does not disclose the recited limitations of “*each of the customized icons including icon portions, the icon portions for each of the customized icons*

*including a main body icon portion and a pair of wing icon portions, each of the wing icon portions being directly attached to the main body icon portion and protruding from the main body icon portion."*

Since Seki et al. does not disclose the recited limitations with respect to the "main body icon portion" and the "pair of wing icon portions," claim 9 is not anticipated by Seki et al.

**C. Rejection of Independent Claim 14 Under 35 U.S.C. §103(a)**

In the Final Office Action of October 5, 2005, the independent claim 14 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Seki et al. and in further view of Perroux et al. However, the Examiner has failed to establish a *prima facie* case of obviousness under 35 U.S.C. §103(a) for claim 14.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

In the case at hand, even assuming arguendo that the cited references of Seki et al. and Perroux et al. are combined in the manner suggested by the Examiner, these cited references do not teach or suggest all the limitations of claim 14. In the Final Office Action on page 7, the Examiner asserts that Seki et al. teaches "the visual traits including a main body icon portion and a pair of wing icon portions connected to the main body portion and protruding from the main body portion (see Claim 9 rejection *supra*)." However, as explained above with



respect to the rejection of claim 9, Seki et al. does not teach the limitations of *"each of the customized icons including icon portions, the icon portions for each of the customized icons including a main body icon portion and a pair of wing icon portions, each of the wing icon portions being directly attached to the main body icon portion and protruding from the main body icon portion."*

Consequently, the cited references of Seki et al. and Perroux et al. when combined do not teach or suggest all the limitations of claim 14. Thus, the Examiner has failed to establish a *prima facie* case of obviousness for claim 14.

**D. Rejection of Dependent Claim 20-22 Under 35 U.S.C. §102(e)**

In the Final Office Action of October 5, 2005, the dependent claims 20-22 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable in view of McKnight et al., Seki et al. and/or Perroux et al. However, the Examiner has failed to establish a *prima facie* case of obviousness under 35 U.S.C. §103(a) for claims 20-22.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

In the Final Office Action on page 11, the Examiner asserts that "[i]t would have been obvious to one of ordinary skill in the art to shape the icon in any form, including the form of a Venetian candy, seeing as though it has a main body and wing portions" and that "[o]ne would have been motivated to do so for aesthetic purposes, to make the interface look pleasing or to attract the users .

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attention that the icon is different from other icons.” Since the Examiner has not provided any documentary evidence in support of the above assertions, it appears that the Examiner is asserting common knowledge in the art. However, it is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based. See *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697; *Ahlert*, 424 F.2d at 1092, 165 USPQ 421. Furthermore, the Examiner is essentially asserting that a configuration of an icon is not patentable subject matter by stating that every possible configuration of an icon is obvious. Clearly, such assertion has no legal or factual basis. Therefore, the Examiner has not provided a valid suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the cited reference of McKnight et al. or the cited reference of Seki et al. in the manner suggested by the Examiner. Consequently, the Examiner has failed to establish a *prima facie* case of obviousness for claims 20-22.

**E. Rejection of Dependent Claims 2, 6-8, 10-13 and 15-19 Under 35 U.S.C. §102(e) or §103(a)**

In the Final Office Action of October 5, 2005, the dependent claims 2 and 6-8 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by McKnight et al. In addition, the dependent claims 10-13 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Seki et al. Furthermore, the dependent claims 15-19 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Seki et al. and in further view of Perroux et al. Each of these dependent claims 2, 6-8, 10-13 and 15-19 depends on one of the independent claims 1, 9 and 14. As such, these dependent claims include all the limitations of their respective base claims. Therefore, the dependent claims 2, 6-8, 10-13 and 15-19 are either not anticipated or not obvious for at least the same reasons as their respective base claims.

## SUMMARY

With respect to claims 1-2 and 6-8, the cited reference of McKnight et al. does not disclose the recited limitations of *"the plurality of icon portions including a main body icon portion and a pair of wing icon portions, each of the wing icon portions being directly attached to the main body icon portion and protruding from the main body icon portion."* Thus, claims 1-2 and 6-8 are not anticipated by McKnight et al. With respect to claims 9-13, the cited reference of Seki et al. does not disclose the recited limitations of *"each of the customized icons including icon portions, the icon portions for each of the customized icons including a main body icon portion and a pair of wing icon portions, each of the wing icon portions being directly attached to the main body icon portion and protruding from the main body icon portion."* Thus, claims 9-13 are not anticipated by Seki et al. With respect to claims 14-19, the cited references of Seki et al. and Perroux et al. when combined do not disclose the recited limitations of *"each of the customized icons including icon portions, the icon portions for each of the customized icons including a main body icon portion and a pair of wing icon portions, each of the wing icon portions being directly attached to the main body icon portion and protruding from the main body icon portion."* Thus, the Examiner has failed to establish a *prima facie* case of obviousness for claims 14-19. With respect to claims 20-22, the Examiner has not provided a valid suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the cited reference of McKnight et al. or the cited reference of Seki et al. in the manner suggested by the Examiner. Thus, the Examiner has failed to establish a *prima facie* case of obviousness for claims 20-22.

For all the foregoing reasons, it is earnestly and respectfully requested that the Board of Patent Appeals and Interferences reverse the rejections of the Examiner regarding claims 1, 2 and 6-22, so that this case may be allowed and pass to issue in a timely manner.

Respectfully submitted,  
Budrys et al.

Date: February 22, 2006

By: Thomas H. Ham  
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### VIII. Claims Appendix

1 1. A multi-component icon generated from characteristics of a data object  
2 where the characteristics include data object content and data object metadata,  
3 said icon comprising:  
4 a plurality of icon portions, each having a plurality of visual  
5 variations, each icon portion being variably assignable to any one characteristic of  
6 the data object wherein each variation of the at least one characteristic is visually  
7 represented by the icon by a corresponding one visual variation of a variably  
8 assigned icon portion, the plurality of icon portions including a main body icon  
9 portion and a pair of wing icon portions, each of the wing icon portions being  
10 directly attached to the main body icon portion and protruding from the main body  
11 icon portion.

1 2. The icon as described in Claim 1 wherein the data object is one of a word  
2 processing document file, executable files, software applications, audio files,  
3 image files, video files, and print spool queues.

1 3. (canceled).

1 4. (canceled).

1 5. (canceled).

1 6. The icon as described in Claim 1 wherein the visual variations comprise at  
2 least one of variations of colors, variations of shades of colors, variations of  
3 shapes, and variations of patterns.

1 7. The icon as described in Claim 1 wherein the visual variations have  
2 secondary visual variations.

1 8. The icon as described in Claim 1 being interactive with other icons  
2 corresponding to other data objects so as to visually indicate similarities and  
3 differences in characteristics of the data object and the other data objects.

1 9. A method of generating a multi-component icon from characteristics of a  
2 data object where the characteristics include data object content and data object  
3 metadata, said method comprising:  
4 providing an icon having a plurality of visual traits each having a  
5 plurality of visual variations, the plurality of visual traits including icon portions,  
6 the icon portions including a main body icon portion and a pair of wing icon  
7 portions, each of the wing icon portions being directly attached to the main body  
8 icon portion and protruding from the main body icon portion;  
9 variably assigning any one of the visual traits to any one of the  
10 characteristics of the data object metadata such that each variation of a selected  
11 characteristic of the data object metadata is represented by a visual variation of a  
12 selected visual trait; and  
13 displaying the icon according to the assignment of the selected  
14 visual trait to the selected characteristic.

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1 10. The method of Claim 9 wherein the selected characteristic of the data  
2 object metadata is variably assigned dependent on user preference.

1 11. The method of Claim 9 wherein the selected characteristic of the data  
2 object metadata is variably assigned automatically.

1 12. The method of Claim 9 wherein the icon is generated with a user initiated  
2 interface and variably assigning is selected through the interface.

1 13. The method of Claim 12 wherein variably assigning is session based  
2 through the interface such that in one session a given visual trait may be assigned  
3 to a first characteristic and in a second session the given visual trait may be  
4 assigned to a second characteristic.

1 14. A method of creating a multi-component icon for each of a set of data  
2 objects from characteristics of the set of data objects, the characteristics including  
3 data object content and data object metadata, the method comprising:  
4 determining a common characteristic of the data object metadata  
5 common to the set of data objects;  
6 determining the number of variations associated with the common  
7 characteristic;  
8 determining a visual trait of the multi-component icon having a  
9 corresponding number of visual variations that are greater than or equal to the  
10 number of variations of the common characteristic and assigning it to the common  
11 characteristic; and

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12 displaying the customized icons for the set of data objects  
13 according to the assignment of the visual trait to the common characteristic, each  
14 of the customized icons including icon portions, the icon portions for each of the  
15 customized icons including a main body icon portion and a pair of wing icon  
16 portions, each of the wing icon portions being directly attached to the main body  
17 icon portion and protruding from the main body icon portion.

1 15. The method as described in Claim 14 wherein the common characteristic of  
2 the data object metadata is variably assigned dependent on user preference.

1 16. The method as described in Claim 14 wherein the common characteristic of  
2 the data object metadata is variably assigned automatically.

1 17. The method as described in Claim 14 wherein the icon is generated with a user  
2 initiated interface and variably assigning is selected through the interface.

1 18. The method of processing as described in Claim 17 wherein variably assigning  
2 is session based through the interface such that in one session a given visual trait may  
3 be assigned to a first characteristic and in a second session the given visual trait may  
4 be assigned to a second characteristic.

1 19. The method of processing as described in Claim 14 wherein variably assigning  
2 is dependent on type of characteristic.



1 20. The icon of Claim 1 wherein the main body icon portion and the pair of wing  
2 icon portions are shaped to resemble components of an ornamental Venetian glass  
3 candy.

1 21. The method of Claim 9 wherein the main body icon portion and the pair of  
2 wing icon portions are shaped to resemble components of an ornamental Venetian  
3 glass candy.

1 22. The method of Claim 14 wherein the main body icon portion and the pair of  
2 wing icon portions are shaped to resemble components of an ornamental Venetian  
3 glass candy.

**IX. Evidence Appendix**

NONE

**X. Related Proceedings Appendix**

NONE